

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr.A No.195 of 1993

Decided on : November 16, 2007

State of H.P.	...Appellant.
Versus	
Satish Kumar	...Respondent.

Coram

The Hon’ble Mr. Justice Surjit Singh, Judge.

The Hon’ble Mr. Justice Surinder Singh, Judge.

Whether approved for reporting?

For the Appellant : Mr. Som Dutt Vasudeva, Additional Advocate General.

For the Respondent : Mr. Anup Chitkara, Advocate.

Surjit Singh, Judge(Oral)

State is aggrieved by the judgment of the Sessions Court whereby accused-respondent Satish Kumar, who was charged with and tried for an offence punishable under Section 302 IPC for allegedly murdering one Leela Wati on the evening of 15th May, 1990, has been acquitted.

2. The allegations on which the respondent was charged with and tried for are as follows. Deceased Leela Wati had her fields and cattle-shed near the house of the respondent. Often the cattle of the respondent trespassed into the fields of the deceased and damaged her crop. The deceased, on one side, and the respondent and his family members, on the other, often quarreled over the damage to the crops of the deceased caused by the trespassing cattle of the respondent. The deceased had her residence at some distance from

Whether reporters of the local papers may be allowed to see the judgment?

her cattle-shed and the fields. She used to reach the cattle-shed early in the morning and would return late in the evening after working in the fields. On 14th May, 1990, when she was working in the fields, in the afternoon, an ox of the respondent trespassed into her fields and started damaging the crop. Respondent followed the ox and took it away. The deceased then went to the house of the respondent and protested against the damage to her crop by the ox. A quarrel ensued. The respondent allegedly threatened that he would kill the deceased. On 15th May, 1990, the deceased went to her cattle-shed in the morning, as usual, but did not return in the evening. Her son Surinder Kumar (PW-2) went in search of her around 8.45 p.m. On the way, he noticed a basket belonging to his mother and straw which she used to carry in the basket lying scattered by the side of a *Kuhl*. In the light of the torch, he noticed some dragging marks towards the fields indicating that someone had been dragged. He got scared and went to the village to call some co-villagers. He returned to the spot in the company of Madan Lal, Sher Singh and Kushal Kumar. They all followed the dragging marks. At a distance of about 50 feet, dead body of the deceased was found lying.

3. Police was informed telephonically by the Pradhan of Gram Panchayat Nebar. Some Police Constables reached the spot that very night. They guarded the dead body. Next morning, the SHO, PW-15 SI Pritam Singh, also reached the spot. He recorded the statement, under Section 154 of the Code of Criminal Procedure, of PW-2 Surinder Kumar and forwarded the same to the Police Station for formal registration of the case. Inquest was conducted and the dead body was sent to the hospital for postmortem. The doctor noticed a

head injury on the dead body and opined that the said injury had caused the death.

4. During the course of investigation, PW-9 Prakash Chand made a statement that when he was returning from Lekh Ram's machine where he had gone to collect money from said Lekh Ram, he saw the deceased going towards her house with a basket on her hand and since she was walking slowly he overtook her and went past her. He also stated that after having overtaken the deceased and covered a good deal of distance, he saw the accused standing under a banyan tree wearing knickers and a vest (*baniyan*). He also stated that after he went past, even the accused, he heard the cries of the deceased and turned back and rushed towards her. After covering some distance, he again heard the cries of the deceased and she was shouting "*Hai Vo Chetu Tu Kiya Karda*", meaning "O Chetu (name of the accused-respondent) what are you doing". He also stated that he saw the accused dragging the deceased and that when he coughed loudly to alarm the respondent, the latter ran away from the spot. This statement was made to the Police by PW-9 Prakash Chand on 18th May, 1990. Thereafter, the respondent was arrested. He made a disclosure statement leading to the discovery of a *danda* which he allegedly used to hit the deceased on head.

5. Trial Court has disbelieved the version of PW-9 Prakash Chand. The trial Court has also disbelieved the version of PW-6 Krishna Kumari, a step-daughter of the deceased, that once the deceased had seen the respondent in a compromising position with a lady by the name of Kanta, wife of Om Prakash, and fearing that the deceased might disclose this fact to the other villagers, he eliminated her.

6. We have heard the learned Additional Advocate General and gone through the record.

7. We see no reason to disagree with the view taken by the trial Court that the testimony of PW-9 Prakash Chand is not reliable. It has come in evidence that the police visited the village on 16th, 17th & 18th and PW-9 Prakash Chand had also been with the Police on all the three days. Even though PW-9 Prakash Chand denied being on the spot on 16th and 17th when the police was there, PW-3 Anoop Kumar, PW-4 Duni Chand and PW-5 Mehar Chand have stated that he was very much present on the spot on 16th and 17th also. It was only on 18th May, 1990 that PW-9 Prakash Chand made statement to the Police that he had seen the respondent dragging the deceased from the village path towards the fields, on the fateful night.

8. Explanation offered by PW-9 Prakash Chand for not disclosing to the Police what he allegedly saw on the night of 15th May, 1990, prior to 18th May, 1990, is that he was under fear. It is not his case that he was threatened by the respondent. Also, it appears from his statement that he was not scared, because he has stated that when on hearing the cries of the deceased he ran towards her, he saw the respondent dragging her and challenged him that he had not done a good thing. Now, when the witness had the courage to challenge the respondent on the spot when he was killing the deceased and was in a furious mood, his explanation that he did not report the fact to the Police for three days out of fear, cannot be accepted. Not only this, according to his own statement, when he loudly coughed on seeing the respondent dragging the deceased, the latter left the deceased and ran away, meaning thereby that it was the respondent and not the witness who was scared.

9. The abovestated position apart, the witness stated that when he heard the cries and saw the respondent dragging the deceased, three persons named Jagdish, Harbans and Raju met him. He says that he did not disclose anything to them. This conduct of the witness is unnatural. Further, when the witness could hear the deceased crying and see the respondent dragging the deceased, it can legitimately be presumed that Jagdish, Harbans and Raju, who allegedly met this witness, also might have at least heard the cries of the deceased. The prosecution did not examine any of these three persons to seek corroboration to the testimony of PW-9 Prakash Chand that they were there and met him and also that the cries or the shouts of the deceased were heard.

10. The testimony of PW-6 Krishna Kumari, the step-daughter of the deceased, with regard to the alleged motive has been disbelieved by the trial Court, because in her statement, under Section 161 of the Code of Criminal Procedure, Ex. DB, with which she was duly confronted, she did not make even a whisper of such a motive. We see no reason to disagree with the view of the trial Court.

11. For the foregoing reasons, the appeal is dismissed.

(Surjit Singh), J

November 16, 2007_(sd)

(Surinder Singh), J